



COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission ADVISORY OPINION 08-23

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July 11, 2008

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RE: May an Administrative Section Supervisor for the Kentucky Law Enforcement Council ("KLEC") administer polygraph tests through her own private company to individuals monitored by probation and parole?

DECISION: Yes.

This opinion is issued in response to your May 29, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 11, 2008 meeting of the Commission and the following opinion is issued.

You are employed as an Administrative Section Supervisor for KLEC, which is administratively attached to the Department of Criminal Justice Training in the Justice Cabinet. KLEC oversees law enforcement training academies, curriculum and instructors, as well as the Professional Standards Acts for peace officers, telecommunicators and court security officers throughout Kentucky; and certifies enforcement agencies and/or officers as required by KRS 15.380. KRS 15.380 states that personnel for the Department of Corrections may request to be certified by KLEC, but no such request has ever been made.

You also are a licensed and self-employed polygraph examiner. You ask whether you may administer polygraph exams to convicted sex offenders who are required by the Justice Cabinet, Department of Corrections, to complete a sex offender treatment program with state employed therapists as a condition of probation and parole. Department of Corrections policy requires the individuals to pay the cost of the polygraph testing, but the Department of Corrections pays the cost in the event that the individual is indigent.

An employee is not required to obtain approval for self-employment, but the employee is required to ensure that no conflict of interest exists between the outside work and the employee's state employment. KRS 11A.020 (1) and (2) provides,

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 08-23

July 11, 2008

Page Two

- (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
 - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.
- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

Although the Executive Branch Code of Ethics does not prohibit an employee from self-employment in addition to his or her state employment, the employee must ascertain that the self-employment does not present a conflict of interest with the employee's official duties for the state. In this case, KLEC has no relationship with the Department of Corrections, other than being administratively attached to the Justice Cabinet. The proposed self-employment of conducting polygraph examinations does not create a conflict of interest with the employee's state duties.

Further, KRS 11A.040 (4) provides:

- (4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. . . .

KRS 11A.010 (10) provides:

- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department.

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 08-23

July 11, 2008

Page Three

While the provisions above prohibit a public servant from contracting or having an agreement with the state agency for which he works, they do not prohibit a public servant from contracting with state agencies other than the one by which he is employed. Based on the fact that KLEC is attached to the Justice Cabinet for administrative purposes only, the Commission believes that KLEC is a separate state agency for purposes of the ethics code. Thus, even in instances when the Department of Corrections pays for the cost of the testing, employees of KLEC are not prohibited from providing that service.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair:


John A. Webb

Enclosures: Advisory Opinion 04-12
 Advisory Opinion 02-6
 Advisory Opinion 00-68
 Advisory Opinion 98-14